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CONTENTS

CURRENT TOPICS

Mr. H. G. Robertson

THE late Mr. H. G. ROBERTSON, who died on 7th July, was, unlike some other eminent members of the Bar, unknown to the average layman. But wherever lawyers practised commercial or local government law his authority was among the highest. The personal tribute paid to him by Sir WALTER MONCKTON, K.C., in *The Times* of 9th July, where he mourned the loss to the Bar of a very distinguished figure, was merited to the full. He was head of the school at Rugby and captain of the Rugby XV, and won the cross-country race three years in succession. He followed this up with a brilliant career at Oxford. In 1903 he was called to the Bar, and in 1929 he became a Bencher of the Inner Temple. "Among his outstanding qualities," wrote Sir Walter, "were his uncompromising common sense and the simplicity which enabled him to get down to the heart of a problem, and made his handling of the most intricate cases appear effortless and serene. Few of his contemporaries had more wisdom and paraded it less. Those who knew him well will long remember his quiet charm and his ready sympathy with other people's troubles."

The International Law Association

FROM 29th August to 4th September of this year the International Law Association is to hold its annual conference at Brussels. At the same time it will celebrate its seventy-fifth birthday, and it will discuss such varied topics as "Human Rights," "Divorce," the "York-Antwerp Rules," "Codification of International Law," "Commercial Arbitration" and "International Arbitration and the Abolition of War." The last-mentioned subject is to be introduced by Mr. W. HARVEY MOORE, K.C. The secretary-general of the Association is Mr. ARTHUR JAFFÉ, of 3 Paper Buildings, Temple, E.C.4. Although International Law dates back at least as far as Grotius, it is still in its infancy; but great British lawyers and judges like Lord Phillimore, Lord Justice Kennedy, Lord Blanesburgh and Lord Macmillan have shown unfailing hope of establishing law between nations and lesser men should therefore not despair. All well-disposed persons will wish the International Law Association a fresh lease of long life on its seventy-fifth birthday.

An Australian Law Convention

THE Fifth Law Convention of the Law Council of Australia, which was opened in Melbourne on 31st March, 1948, is fully reported in vol. 22, No. 1 of the *Australian Law Journal*, dated 20th May, 1948, which has just reached this office. Among the delegates were eminent representatives from New South Wales, Queensland, South Australia and Tasmania. Mr. E. R. REYNOLDS, K.C., devoted much of his presidential address to a consideration of the old conflict between absolutism and liberalism and he told a story about Confucius who found a woman wailing beside a grave because, as she told the sage, first her husband's father, then her husband, and finally her son had been killed by tigers. "Why do you not leave the place?" said Confucius, and the widow replied, "There is no oppressive government here." The moral which Confucius drew was that an oppressive government was more terrible than tigers. The legal policy of absolutism, Mr. Reynolds said, was that law was but a phase of State policy, and where all is law that has the guns, there is no law. Mr. Reynolds concluded with a quotation from De Tocqueville: "I cannot believe that a republic could subsist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people."

"Near Ripe" Land

AN important statement by the Central Land Board announces the terms of the arrangements for "near ripe" land to be made in England and Wales in the case of builders who claim on the £300 million fund. A more detailed account of the arrangements, which are restricted to registered builders, is given in a pamphlet, S.1.A (NR), which will be available at the Board's offices. Generally, only land held by a builder on the 7th January, 1947, which he continues to hold on 1st July, 1948, can be considered. Land acquired from a builder at existing use value by a public authority between 6th August, 1947, and 1st July, 1948, will normally be eligible. Builders who, in addition to holding land as mentioned above, were themselves building on their own land throughout the period 1934–38 or for a period of at least two years between January, 1937, and September, 1939, will automatically qualify. Those with a pre-war building record of less than two years or with no pre-war record at all will receive consideration according to the merits of their case. An advisory committee including representatives nominated by the National Federation of Building Trades Employers and officers of the Central Land Board is being set up to consider these and other cases which do not automatically qualify. The Central Land Board state that the builder will be allowed special treatment on a specified portion or "ration" of the land he now holds. This ration will be his "near ripe" land and he will receive a full payment on it for loss of development value out of the £300 million fund. The rest of his land, if any, will be eligible for ordinary treatment. The ration will be equal to the number of acres of his own land which

he developed in the five years 1934–38. Those who were contract builders during the pre-war period (that is, did not build on their own land) may receive consideration. In addition, the builder may, when he develops land within his " near ripe " ration during the five years before payments are made from the £300 million fund, set off the development charge against the payment that will be due to him.

Dates for Witness Actions in the Chancery Division

ELSEWHERE in this issue (p. 396, *post*) will be found a statement of a new practice direction which the Chancery Judges have, with the approval of the Lord Chancellor, made by way of experiment, for the obligatory fixing of dates for the trial of all witness actions in the Chancery Division from the beginning of next sittings. Master HOLLOWAY of the Chancery Division is to act as the Master in Charge of the Chancery Witness List and will be solely responsible for the settling of the witness list in that Division. The Evershed Committee and its sub-committees have now held over 100 meetings and have considered many suggestions for amending procedure so as to reduce the cost of litigation and secure greater efficiency and expedition in the Supreme Court. It has been suggested that the fixing of dates for the trial of all witness actions would result in a great saving in costs and convenience to litigants, witnesses and practitioners. The official view at present seems to be that this would require considerable administrative changes (particularly having regard to the " circuit system "). It may well be that if this experiment succeeds further progress may follow, and as the change has received the support of the Bar Council and of The Law Society it is hoped that counsel and solicitors will co-operate to the full in order to make it a success.

The Circuit System

THE recent referendum taken by the General Council of the Bar upon the circuit system and special fees on circuit showed, as we reported in our " Notes and News " last week, heavy majorities in favour of the circuit system and the special fee for non-members of circuits to which they were briefed. Nothing else could have been expected, for first of all, it was the result not of lengthy discussion and voting afterwards by responsible delegates, after the manner of English democracy, but of a referendum, which is rightly regarded as alien to our constitutional methods. Secondly, the appeal was to barristers, who nearly all belong to circuits, are loyal to their circuits, and have more or less of a vested interest in the work on their circuits. A referendum of solicitors, or, if possible, of litigants, might well have produced a very different result. The circuit system has some advantages, but its present machinery is more adapted to the age of the stage-coach than that of the express train and aeroplane. It is something in favour of those barristers who voted that about half of them were in favour of some modification. One cannot help wondering what proportion of practising members of the Bar refrained from voting, or even forgot to vote.

Dissolved Authorities and Legal Proceedings

THE National Health Service (Dissolved Authorities) Regulations, 1948 (S.I. No. 1292), made under s. 78 of the National Health Service Act, 1946, provide for the winding up of governing bodies of voluntary hospitals, dissolved by that section. For the purposes of legal liabilities and legal proceedings reg. 6 is important. It provides that (*a*) all contracts and instruments subsisting in favour of or against a dissolved authority in relation to property or liabilities transferred by the regulations are to be of full force and effect in favour of or against its successors ; (*b*) actions or proceedings or causes of action or proceedings pending or existing immediately before 5th July, 1948, by or against a dissolved authority may be continued by or against its successors ; (*c*) all legal proceedings pending immediately before 5th July, 1948, may be amended in such manner as may be necessary or proper for enabling them to be prosecuted and enforced by or against the successors of the dissolved authority or in relation to any interest of the dissolved authority whether vested or contingent in any property.

A Legal Aid Scheme

EVERY day brings nearer the time when the details of the Legal Aid Bill will be known. In the meantime, it is instructive to read of the details of another scheme for legal aid, which, according to D. BRUCE ROSS, K.C., President of the South Australian Law Society, has worked successfully in South Australia for fourteen years. In his paper on " A Legal Assistance Scheme," contributed to the Fifth Law Convention of Australia, and published in the issue of the *Australian Law Journal* for 20th August, 1948, he noted with satisfaction that rigid financial limits for legal aid, which date back to an English statute of 1494, are to be abolished by the Rushcliffe Scheme, although still applying to full legal aid. In South Australia, after trying the device of appointing a Public Solicitor for a few years, the State abandoned State-controlled legal aid and arranged for the Law Society of South Australia to provide a comprehensive scheme. Costs are not paid by the State under the scheme, but direct by the client to the solicitor appointed, and are fixed by a committee of the society according to the client's means. The whole of the profession is behind the scheme, and it is almost unheard of for a solicitor or counsel to refuse to act. There is consequently no need for a panel of volunteers. Finally, no publicity is ever given to the fact that a client is being assisted by the scheme, and no statement to that effect is made in court.

Recent Decisions

On 30th June (*The Times*, 1st July), CROOM-JOHNSON, J., held that the registration book of a motor-car was not " a document of title " within the meaning of s. 1 (4) of the Factory Act, 1889, as its purpose was to show who was liable to pay and who had paid the road fund tax in respect of a car.

The Court of Appeal (SCOTT and ASQUITH, L.JJ., and ROMER, J.), on 1st July (*The Times*, 2nd July), made observations on the grave risk to which the false appearance of ownership, worn by the mere hirer of a car under a hire-purchase agreement, might expose an innocent but foolish would-be purchaser, in fact a whole series of such buyers. Consideration should be given to the questions whether legislation requiring disclosure in the car's " log book " of the fact of a hire-purchase agreement attaching to the car was desirable in the public interest and practicable. Scott, L.J., considered such compulsory disclosure essential for the protection of the public, unless there were insuperable objections.

In *E. Atkinson* (*Inspector of Taxes*) v. *Goodlass, Wall and Lead Industries, Ltd.*, on 8th July (*The Times*, 9th July), SINGLETON, J., held that the words " if in any year of assessment," in proviso (ii) to s. 30 of the Finance Act, 1926, meant " if in the year in respect of which tax was being computed " and not " if in any year." Accordingly, where a company had between 1932 and 1936 acquired shares in an Argentine company and the Argentine company did not declare dividends on those shares until January, 1943, it was held that the usual rule applying to dividends received from foreign companies should apply, and income tax should be charged on the income received in the year preceding the year of assessment and not, as respects the year of assessment in which the income first arose, on the income arising within that year.

In *Hadlum* v. *Hadlum*, on 8th July (*The Times*, 9th July), the Court of Appeal (TUCKER, BUCKNILL and SOMERVELL, L.JJ.), held that as there was medical evidence that a period of gestation of 349 days was not an impossibility, and as there had not been any sufficiently unusual features in the case to impel the court to reject the medical evidence and infer that adultery had taken place, a husband's petition, founded on adultery which he sought to prove by non-access and the birth of a child 349 days after his last opportunity of access to his wife, must fail.

TOWN AND COUNTRY PLANNING ACT, 1947

LOCAL LAND CHARGES AND REGISTERS OF PLANNING APPLICATIONS

THE subject of searches in local land charges registers was discussed, *inter alia*, in an article at 92 SOL. J. 238, and the present article will not traverse again the ground covered there. Its object is to discuss the relationship of county and district council local land charges registers and the public registers of applications kept under the Restriction of Ribbon Development Act, 1935, and the Town and Country Planning Act, 1947, respectively, with which is interwoven the particular position of conditional interim development permissions granted under the old planning law and conditional ribbon development consents.

To start this discussion the provisions of ss. 75 and 76 of the 1947 Act must be mentioned. Both are rather lengthy sections, but briefly s. 75 provides that, where development existing on 1st July, 1948, contravenes previous planning control, the appropriate procedure under the 1947 Act for the removal or discontinuance of the offending works or use may be put in hand by the local planning authority, and s. 76 that, where development existing on 1st July, 1948, was authorised subject to conditions under previous planning control, the conditions may be enforced against the owner after the 1st July as if they had been imposed on a planning permission granted under the 1947 Act. A purchaser, therefore, at least for four years (s. 23) is concerned with previous planning control under the enactments relating to town and country planning and also previous control under the Restriction of Ribbon Development Act, 1935, since control under this Act is for the purposes of ss. 75 and 76 put on a similar footing to planning control by the Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948 (S.I. 1948 No. 1520), and the Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948 (S.I. 1948 No. 1126), respectively. Therefore resolutions relating to planning schemes under the old law and resolutions to adopt standard widths under s. 1 or control under s. 2 of the 1935 Act should still remain in the appropriate local land charges registers, i.e., of the county borough or county district council for planning resolutions and of the highway authority concerned for 1935 Act resolutions. A purchaser should search for these and he will know that he must make sure that any necessary interim development permissions or ribbon development consents have been obtained, the date of the resolution to prepare a scheme giving him the date when planning control started, the date of advertisement of the Minister of Transport's confirmation of the s. 1 or s. 2 resolution and the dates of control thereunder. As is well known, s. 2 of the 1935 Act did not have to be specifically adopted for roads which were classified roads on 17th May, 1935, but applied automatically. No entry of the automatic application would appear in any register, and therefore the usual supplementary inquiry was put: "Are the highways abutting . . . subject to restrictions under s. 2 . . . ?" Sections 1 and 2 have both been repealed as from 1st July but, as shown above, their past effect is still alive and, in addition to searching for resolutions adopting them, the supplementary inquiry should continue to be put with the substitution of "Were" for "Are." A negative answer to the inquiry in its usual printed form without this substitution might be strictly correct, but might easily be misleading.

Turning now to the registration of planning and ribbon development permissions and consents, under the old law there was a considerable difference between the two. A planning permission did not have to be registered in the local land charges register even if granted subject to conditions (this was the result of an amendment to s. 15 of the Land Charges Act, 1925, contained in the Schedule to the Law of Property (Amendment) Act, 1926), or in any other register, whereas ribbon development consents, if granted subject to conditions, had to be registered as local land charges, and whether or not conditional had to be entered (s. 7 (6), now repealed, of the 1935 Act) in a register open to inspection by persons interested, without charge. In an article on the Town and Country Planning Bill (91 SOL. J. 316) it was stated that owing to repeals to be effected by the Bill in the Schedule to the Law of Property (Amendment) Act, 1926, it appeared that conditional planning permissions granted after the appointed day and any conditional permissions granted before that day would appear as entries in the local land charges register. This is now the case, and any conditions on a permission under the old law or the new will be void against a purchaser for value if not disclosed as an entry in a search certificate granted after 1st July, 1948. Conditional ribbon development consents will continue to be disclosed as such entries, as has been necessary in the past, subject to a change of register which is mentioned below.

In addition to conditional planning permissions having to be registered as local land charges, s. 14 (5) of the 1947 Act requires the local planning authority to keep a register for public inspection of all applications received for planning permission under the Act, showing how they have been disposed of. Failure to make an entry in this register seems to have no effect on the permission or refusal granted. Although in an administrative county the county council are the local planning authority, this register will normally be found at the offices of the local county district council because the county council have delegated under s. 34 of the Act the duty of keeping it to the district council, or because they have made other arrangements for keeping it there. Article 12 (2) of the General Development Order, 1948, requires an index to the register to be kept in the form of a map, unless the Minister approves some other form, and this will be most helpful for tracing an entry. The Ministry of Town and Country Planning in Circular 47/48 point out that the Act makes no provision for official searches in this register, merely providing for personal inspection, but they hope local planning authorities will be able to make arrangements for extracts from the register to be sent by post.

The last provisions to be mentioned are those of the Local Land Charges (Amendment) Rules, 1948 (S.I. 1948 No. 1283 (L.12)). These in effect require planning charges under the 1947 Act to be registered in Pt. III of the local land charges register of the borough or district council concerned. Thus, though in an administrative county the county council are the local planning authority by whom the charge would normally be enforceable, the entry will not appear in their register, but in that of the district council. Now the effect of s. 76 of the 1947 Act and S.I. 1948 No. 1126, mentioned above, is that a conditional ribbon development consent under the 1935 Act becomes a planning charge under the 1947 Act, and instead of appearing in the county register as before should, since 1st July, appear in the county district register. Section 1 and s. 2 resolutions will, however, remain in the county register where already there.

The task of entering all pre-1947 Act conditional planning permissions in county district council registers and transferring conditional ribbon development consents from county to district registers is a heavy one, and a certain amount of delay in returning searches may be caused in the interim period until the work has been completed.

Any duplication of registers involved is minimised by the Local Land Charges Rules, which provide that a charge registered in an existing register of a local authority or a s. 14 (5) register shall be sufficiently entered in the local land charges register if the latter contains a reference against the land to the other register sufficient to enable the relevant entry to be traced (r. 14 of the 1934 Rules, as amended).

In conclusion, it may be mentioned that the section of the Petroleum (Consolidation) Act, 1928, under which filling-station byelaws were made, and the Acts under which advertisement byelaws were made, have been repealed by the 1947 Act as from 1st July, but here again it would be well to inquire whether such byelaws have been in force.

R. N. D. H.

Company Law and Practice

THE DELEGATION OF DIRECTORS' AUTHORITY

IT is clearly of the utmost importance that an outsider dealing with a company should be certain with whom he can transact business so that the company is bound. It is of course a general rule that, as the memorandum and articles of a company are registered, anybody dealing with the company is deemed to have notice of them. Thus, if the powers of the company itself are limited in any particular manner, e.g., as to the amount of money a company may borrow, anyone dealing with that company is affected with notice of this limitation (*Fountaine* v. *Carmarthen Ry. Co.* (1868), L.R. 5 Eq. 316). Despite this general rule, however, a curious doctrine has grown up that, if it is to the outsider's disadvantage, he is deemed to have had notice of the articles, but if it is to his advantage to rely on those articles he may not be able to do so unless he can establish that he has read them (*Houghton & Co.* v. *Nothard Lowe & Wills, Ltd.* [1927] 1 K.B. 246; [1928] A.C.1). In this case it was laid down by Sargant, L.J. (Atkin, L.J., concurring), that persons contracting with one who purports to act on behalf of a company may rely on their knowledge of the power of delegation . . . but that they cannot rely upon the supposed exercise of a power of delegation which was never in fact exercised and of the existence of which they were in ignorance at the date when they contracted. In *Kreditbank Cassel* v. *Schenkers* [1927] 1 K.B. 826, at p. 832, Scrutton, L.J., enunciated the principle as follows: " Although there is a power of delegation contained in the articles of association, and although a person dealing with the company is deemed to know it, he cannot be heard to say: ' I am deemed to have known of the power to delegate and I acted upon it,' unless it is proved that he had knowledge of the existence of that power." Scrutton, L.J., felt himself bound to apply this principle although it does not appear that he was convinced of its soundness. In *British Thomson-Houston Co.* v. *Federated European Bank* [1932] 2 K.B. 176, *Houghton's* case, *supra*, was considered and was distinguished, and it appears that the Court of Appeal found some difficulty in accepting the principle that an outsider must have read the articles before he can rely on them. A summary of the law on this point by the law reporters is to be found at the end of this case, and this summary was approved by Tucker, J., in *Clay Hill Brick and Tile Co.* v. *Rawlings* [1938] 4 All E.R. 100; it will be noted that the law reporters' summary is concluded as follows: " It is submitted that actual knowledge on the part of the plaintiff of the contents of the articles of association is irrelevant except to an issue raised as to his *bona fides*."

The position in each instance must depend on the articles adopted, but let us consider the case of a company which adopts Table A and does not extend the directors' power to delegate by means of special articles. Table A of 1948 gives the following powers of delegation: reg. 102 (identical with cl. 85 of the 1929 Table A) provides that " the directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors." Regulation 109 (a new clause in Table A) provides that " the directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any such powers."

Regulation 102 enables the board of directors to delegate powers to one or more directors, and it is pointed out that such a director may or may not also hold an executive appointment in the company. The position of an outsider relying on such an article and dealing with a single director would appear to be as follows: if the transaction is one which would ordinarily be within the power of one director, then the company cannot dispute that director's authority to execute the transaction, whether the directors have or have not actually invested him with authority to do so (*Mahony* v. *East Holyford Mining Co.* (1875), L.R. 7 H.L. 869; and see *British Thomson-Houston Co.* v. *Federated European Bank, supra*). But if on the other hand the transaction is one which would normally be beyond the power of a single director, it is submitted that an outsider cannot assume that the board of directors have delegated to the director power to execute the transaction; and if they have not done so the outsider cannot recover from the company (*Houghton & Co.* v. *Nothard Lowe & Wills, supra*). Regulation 109 in effect enables the board of directors to delegate to a managing director any of the powers exercisable by the board on such conditions as the board may determine. In this case an outsider may safely deal with the managing director and need not concern himself with whether the conditions and restrictions imposed by the board have been complied with. The authority of the board of directors may even have been revoked, but this will not concern the outsider unless there are circumstances which should put him on inquiry; for these are matters of the internal management of the company and the case is covered by the rule in *Royal British Bank* v. *Turquand* (1855), 5 El. & Bl. 248.

It should, however, be noted that the 1948 Table A does not give the directors any other power to delegate their authority, so that, if they want to delegate to other employees of the company, the articles must first be altered to include fresh powers (e.g., should the directors wish to delegate to provincial managers or departmental chiefs). In cases where a company adopts wider powers of delegation than those contemplated by the 1948 Table A, a great deal must depend upon the position in the company of the person purporting to bind it. If the contract is unusual or the circumstances of the case warrant it, the outsider should be put on inquiry. If this is so and the outsider has not made sufficient inquiries, and it turns out that there has been no actual delegation, an article giving power to delegate could probably not be relied on, even if the outsider had read the article before entering into the contract (*Houghton & Co.* v. *Nothard Lowe & Wills, supra*).

As delegation is essential if business is to be carried on efficiently, nearly all articles contain power to delegate, and in general it is true that the bigger the company the wider the powers of delegation necessary. As the law stands at present, however, it is wiser not just to assume that everything is in order and that the necessary powers of delegation do in fact exist; on the contrary, before transacting business of any importance with a company it is essential to read its articles and in particular to ascertain its powers of delegation.

S.

A Conveyancer's Diary

LEGACIES TO SERVANTS

IT may be objected that the number of people who can afford to employ servants and leave them legacies is diminishing so rapidly that this topic is not one on which valuable space should be wasted. I do not agree with this view. Anyone who has acted as an executor of an estate in which servants have taken a benefit knows how much a legacy given to a faithful servant is appreciated, and still more how difficult it is to explain to a disappointed claimant that the benefit he or she has been led to expect must, for some technical reason, be wholly or partially disallowed. If the executor

is also a lawyer the knowledge that a little more care on the draftsman's part would have spared him an interview with a clamorous and dissatisfied retainer does nothing to assuage his feelings.

Most of the difficulties in regard to legacies to servants arise in connection with gifts to servants as a class. The modern tendency is to construe such gifts as liberally as possible, but there is a limit to the extent to which well settled rules can be distinguished, and in general it is far better, when circumstances permit, to mention the legatees *nominatim* in the will and to define the benefit each is to take as precisely as possible. A form to which no objection can be taken on any technical ground is a gift to X of "the sum of £y together with £z for each year during which he shall have been in my service before the date of my death provided that he shall not then be under notice to leave whether given or received in addition to any moneys owing to him by me at such date." This form is not, however, suitable either where there are likely to be a large number of servants to be provided for, or where the testator is reluctant to mark any changes in his staff by the addition of a codicil. In such cases recourse has to be made to a form which will provide for all the testator's servants as a class. It is at this point that certain rules of construction, and their possibly startling results, have to be considered.

The decisions which exemplify these rules are noted for the most part in the books of precedents, and of course appear in the books on wills, and there is nothing new about any of them. But they are not always borne in mind at the drafting stage, perhaps because the benefits to which they refer do not appear very important. This is a mistake, as Joyce, J., pointed out in *Re Ravensworth* [1905] 2 Ch. 1, and it is the purpose of this article to draw attention to the need for precision and care in drafting any provisions of this kind.

In any gift to servants as a class it is important to bear in mind the meaning of the word "servant." The word is a perfectly general word and *prima facie* includes every person between whom and his employer the ordinary relationship of master and servant exists. In *Re Forrest* [1916] 2 Ch. 386, Sargant, J., held that farm labourers employed directly by the testator, although servants of his in some sense, were not servants in the meaning in which a testator must be assumed to use that word, which in the view of the learned judge must in that context be confined to persons who in some way minister to the personal wants or comfort of the testator. A later decision of the same judge (*Re Cassel* (1922), 39 T.L.R. 75) seems to indicate that the social level of persons who can be classed as servants for the purposes of a testamentary gift may vary with the social and economic position of the testator—an extraordinarily difficult decision to apply without the assistance of the court. *Re Forrest, supra*, was not followed in *Re Drake* [1921] 2 Ch. 99, where the gift was to "indoor and outdoor" servants. P. O. Lawrence, J., reviewed other decisions where keepers and such had been included (at any rate by admission) in such a gift and pointed to the difficulty of drawing a line: "I cannot help asking myself if keepers are included as servants, why are not woodmen; and if woodmen, why not farm labourers? Obviously the line cannot be drawn according to whether the testator happened to be more fond of shooting than of forestry or farming." And by parity of reasoning, if farm labourers, why not workmen employed directly by a testator in his own business, e.g., that of a master-builder? The moral of this is that the current meaning of "servant" in a will is very wide, and a testator minded to make a gift to servants as a class should be interrogated closely on the number of his employees and the nature of their employment, with a view to eliciting the extent of his proposed bounty and the possibility of some further definition of the beneficiaries. Some nice questions may arise in regard to employees of a "one man" company, for example, questions which, in my opinion, are subjects more fit for the draftsman's timely ingenuity than for subsequent determination on a construction summons. That the qualification "indoor and outdoor" or "domestic" is not very precise, the cases in the books amply demonstrate.

Further difficulties arise in regard to part-time employees. In *Thrupp* v. *Collett* (1858), 26 Beav. 147, it is suggested that a charwoman is not a servant in this context, but this may be only a matter of degree, and *Re Lawson* [1914] 1 Ch. 682 shows that full-time employment is not necessary to qualify a person for a gift to "domestic servants." That case is all the stronger in that the successful claimant there was a trained male nurse, and so not the sort of person ordinarily regarded as a domestic servant. Perhaps the test to apply to part-time employees is continuity of employment, but this does not carry the matter much further; for the question must then be settled whether continuity consists in regular employment for a part of each day, or whether the test is satisfied if a person is regularly employed on, say, two days a week over a period. These questions cannot be answered with any certainty on the authorities, but the existence of doubt on this score does indicate the superiority of gifts to persons by name over gifts to "servants," whether that expression is qualified in some way or not.

A common form of gift used to be a gift of a year's wages to a servant. It was held in *Blackwell* v. *Pennant* (1852), 9 Hare 551, that a gift in this form did not include servants hired and paid by periods of less than a year, and this decision was followed by the Court of Appeal in *Re Ravensworth, supra*. Short of the unlikely event of a determination by the House of Lords, this rule must be regarded as firmly established, and it would seem to follow that a gift of a month's wages (or a month's wages for each period of defined service) would not include servants paid by the week, i.e., most domestic servants (in the usual sense) according to current custom. A gift of the *amount* of a year's wages does not, however, fall within the rule, and servants paid by any period are entitled to benefit under such a gift (*Re Earl of Sheffield* [1911] 2 Ch. 267). The latter form is adopted in most of the books of precedents, but I have seen the older and more inconvenient forms used in a relatively recent will, and one moreover which appeared to have been settled by counsel. There does not seem to be much point in preferring this sliding-scale method of quantifying a legacy to a pecuniary legacy of defined amount, but if it is preferred *Blackwell* v. *Pennant* should not be overlooked.

Another question in connection with the common form gift of so many months' wages to a servant for each year of service, or period of years of service, is that of absence from employment during the qualifying period. Service must be continuous for this purpose, but a temporary break in the service, if it occurs with the consent of the employer, may be disregarded even if no wages are paid during that interval (*Re Lawson, supra*). Some retaining fee paid during absence away from employment would apparently render employment continuous throughout the absence, however long the absence may be (*Re Feather* [1945] Ch. 343), but this is perhaps not quite certain: in the last-mentioned case absence was due to service in the Forces, but the employee returned to full employment and received extra wages during periods of leave when he worked for the testator. There is little doubt that in modern conditions a liberal interpretation would be given to any test based on continuity of service for this purpose.

I hope these notes of certain decisions and trends will serve to disabuse those who still apparently believe that the form of a gift to servants and employees requires little more than a nodding acquaintance with a precedent or two. A little thought and care spent on the drafting of such a gift will earn the thanks not only of beneficiaries, but also of the harassed executor or trustee.

"A B C"

Landlord and Tenant Notebook

"SUBSTANTIAL PORTION OF THE WHOLE RENT": WHEN?

IT was, I think, generally assumed that one statement made by Henn Collins, J., when delivering judgment at first instance in *Property Holdings Co., Ltd.* v. *Mischeff*, namely: "the cost of them [the articles found to be furniture] to-day is somewhere about £200," was an instance of a judicial *lapsus linguæ*. Morton, L.J., treated it as such when the first appeal was heard ([1946] 1 K.B. 645, at p. 651): "I think that the learned judge must have intended to say: 'The value of them in 1942 was somewhere about £200'," that having been the time when the sub-lease concerned was granted, and all the evidence on the point having been directed to establishing the value of the articles at that time. What had, indeed, been argued was not that the comparison ought to be made as things were at the date of the hearing, but that one ought to go back to the date on which, in that case, the defendant's original landlord, who had sub-let to him, had taken the flat from the plaintiff landlords. If fluctuations in the value of furniture, specific or general, had to be considered, awkward questions and positions might arise and be brought about: the tenant of a furnished dwelling might acquire far more protection than the extra three months conferred by the Furnished Houses (Rent Control) Act, 1946, if someone—accidentally, of course—left a lighted cigarette on an armchair.

There was also a change of amount of rent in *Property Holdings Co., Ltd.* v. *Mischeff*, an increase of £100; but no one ever suggested that comparison of furniture value should be made with the increased amount.

In *Jozwiak* v. *Hierowski* (1948), 92 SOL. J. 361; 64 T.L.R. 322 (C.A.), it was in fact assumed, both in the court below and on appeal, that the amount of rent attributable to the use of furniture had to be assessed at the time of the grant; but the determination of the time of the grant was a matter on which the Court of Appeal took a different view from that taken by the learned county court judge. The judgment of Asquith, L.J., touches on a number of points of interest.

First, when stating the facts, the learned lord justice observed that the exact nature of the contract was not easy to ascertain "since the whole transaction was coloured by a charitable element which did not make for precision." The plaintiff landlord had, it appeared, befriended the defendant when the latter was out of work, and let him three rooms. "The terms of the letting are in dispute, but *de facto* it is clear that for the first week or two the defendant paid no rent; for the month of February he paid £4 rent; for subsequent months up to July he paid £6 a month; and thenceforward he paid £10 a month . . . It is not clear whether progressive rises in the rent were provided for when first the contract of tenancy was entered into, or whether the quantum of rent was revised from time to time by agreement to keep pace with the defendant's increased capacity to pay and also with the accession of new increments of furniture placed at his disposal."

The county court judge having found, in an action for possession, that the contractual rent was £6 a month, the Court of Appeal considered that there was no evidence to support this finding, and that the evidence left him no alternative but to find that *the* original *tenancy* was at the rate of £4 a month.

What I find a little puzzling here is that neither court appears to have considered the possibility of successive tenancies, though the words I have italicised suggest that this may have been the explanation. In conveyancing language, we are told much about reddendum, little or nothing about habendum. The facts as stated are at least consistent with one or two tentative licences or lettings for fixed periods, followed by a monthly tenancy at £10 a month. The charitable element and increased capacity element referred to in the judgment almost suggest this. If the matter had been gone into, and it had been found as a fact that there was an entirely new grant when the rooms were let at £10 a month, it might have made a difference; for the court, approving the assessment of the annual value of furniture which had cost £75 at "between £11 and £12" (15 per cent.), held that "without treating any mere arithmetical formula or ratio as decisive," the annual value so found must on any basis be accounted as a substantial portion of £48. The county court judge had found that the annual rent was £72, and that £11-odd was not a substantial portion of that sum. No comment is made on this part of the judgment; but it looks as if the Court of Appeal would not have considered £11-odd a substantial portion of £120.

The somewhat slighting way in which arithmetical formulæ and ratios are referred to is, no doubt, a consequence of the criticism passed in the House of Lords ([1948] 1 All E.R. 1) on the painstaking efforts of the Court of Appeal, in *Property Holdings Co., Ltd.* v. *Mischeff*, to devise a test for the guidance of county courts and practitioners: the Court of Appeal was reminded that it must not usurp the functions of Parliament.

Jozwiak v. *Hierowski* has since been followed, in perhaps less unusual circumstances, in *Bowness* v. *O'Dwyer* (p. 391 of this issue). The plaintiff, in 1946, let the defendant a furnished room at £1 10s. a week; it was (subsequently) agreed that the furniture was worth 3s. 6d. a week and not suggested that the letting would, on these figures, be outside the scope of the 1920–1939 Acts. But early in 1947 the tenant referred the contract to the local rent tribunal under the Furnished Houses (Rent Control) Act, 1946, who reduced the rent to 8s. a week. Finding that this gave him no right to the recovery of any excess paid in the past, he then took proceedings in the county court under the Increase of Rent, etc., Act, 1920, s. 9 (1), under which a court, if satisfied that the rent charged is yielding or will yield a profit in excess of the normal profit, may order that the difference shall be irrecoverable *and* order repayment of any excess payment which may have been made. The landlord served a notice to quit and counter-claimed for possession, with the idea of contending that, the rent now being 8s. a week, 3s. 6d. would be a substantial portion of the whole amount. The judge held that the normal profit would be 13s. 6d., ordering repayment of excess. The notice to quit turned out to be bad, so that the counter-claim failed on that ground alone, but the judge also decided that the 3s. 6d. had to be compared to £1 10s. and not either to 8s. or to 13s. 6d.

Nevertheless the landlord, having served a valid notice, renewed the attack by bringing an action for possession and, the county court judge having adhered to his view, lodged an appeal. The county court judge was upheld on the ground that the "*bona fide*" of "*bona fide* let at a rent which includes payments in respect of furniture" of s. 12 (2), proviso (i), of the Act of 1920 imports a test as to the state of mind of at least the landlord, which must obviously be applied as at the time of making of the contract; and on the ground that the explanatory or amending s. 10 of the 1923 Act requires consideration to be paid to the value of the furniture to the tenant, and certainty demanded that the ratio should be fixed once and for all.

R.B.

MR. W. A. COOK

Mr. Walter Ainsworth Cook, solicitor, of Messrs. Cook and Talbot, Southport, died on 29th June, aged eighty-three. He was an ex-president of Southport and Ormskirk Law Society, and was admitted in 1887.

MR. V. M. WOODHOUSE

Mr. Vivian Mackay Woodhouse, solicitor, of Messrs. Salusbury and Woodhouse, Leicester, died recently, aged eighty-one. He was the oldest practising solicitor in Leicester, and was admitted in 1892.

TO-DAY AND YESTERDAY

LOOKING BACK

BEFORE the French Revolution and in its beginnings Charlotte Corday was a convinced republican and what we would now call a left-wing sympathiser, but when the intellectuals and the men of principle lost control and the professional subversives and strong-arm men took over, all her idealism revolted. Among the terrorists she chose as the object of her vengeance the cosmopolitan adventurer Marat, the most ruthless of the rabble-rousers. Under pretext of denouncing counter-revolutionary activities, she obtained an interview and he received her in his bath, where he habitually sought relief from the eczema which tormented him. There she stabbed him to death at a blow. Four days later, on 17th July, 1793, she was tried before the Revolutionary Tribunal. She was twenty-four years old, tall, lovely and fair, with an apple-blossom complexion, an astonishing contrast with her hideous and misshapen victim. All the approaches to the court were packed, and before her judges she bore herself with a calm dignity worthy of the ancient classical heroes who had been her inspiration, boldly declaring that she had acted to save her country. After sentence she thanked the advocate who had been assigned to defend her and asked him, since her goods had been declared forfeited, to discharge the small debts she left behind in prison. Back in her cell she received a visit from the painter Hauer, an officer in the National Guard, who had begun a sketch of her in court and begged leave to finish it. She graciously posed for him as he desired. The same evening she was taken to the guillotine. Seeing her in the tumbril, Adam Lux, the deputy for Mayence, fell instantly in love with her and followed her to the scaffold in such a fever of open admiration that he was soon afterwards condemned himself for having glorified a criminal. He went eagerly to execution, rapturous at dying for her.

ROBBED IN COURT

IT is reported that while a judge was trying a case in the Supreme Court in Johannesburg thieves entered his private chambers and stole his cigarette case. Things like that have been known to happen rather nearer home. Once, while Mr. Justice Charles was holding the assizes at Lewes, a thief got into his lodgings just opposite the prison and took from his dressing-table gold cuff-links and studs, some money and a key to his London flat. Again, at Chester, a thief once raided Mr. Justice Stable's lodgings at Great Saughall, Chester, and robbed his butler of a gold watch and chain and a silver match-box. Neither of these incidents, however, has the entertainment value of an incident which occurred in Paris before the war. While the Civil Tribunal was sitting a workman entered the court with a ladder. The judge suspended the proceedings, while he unhooked the clock from the wall, explaining that it needed cleaning. He carried it away and it was never seen again. About that time there was a positive epidemic of thefts in the Paris Law Courts. Shortly before the clock incident, the President of the 10th Correctional Chamber returned to his room after dealing with thirty cases of theft and found that his own overcoat had vanished.

PARALLEL INCIDENTS

THERE is one story of the robbery of a judge which seems to turn up generation after generation, circumstantially related of different personalities. Lord Campbell tells it succinctly of Sir John Sylvester, Recorder of London: "He was in my time robbed of his watch by a thief whom he tried at the Old Bailey. During the trial he happened to say aloud that he had forgot to bring his watch with him. The thief, being acquitted for want of evidence, went with the Recorder's love to Lady Sylvester and requested that she would immediately send his watch to him by a constable he had ordered to fetch it." Now, many years afterwards, Montague Williams, Q.C., told an almost identical story of Sir James Ingham, the magistrate at Bow Street. This time the background was that a gentleman travelling on the railway missed his watch, accused a fellow traveller of taking it, and had him arrested. When the case came on next day it turned out that it had been found safe at home. The magistrate then remarked: "To show how liable we all are to make these mistakes, I may mention, as an extraordinary coincidence, that I myself have only this morning been guilty of precisely the same oversight. I was under the impression when I left my house at Kennington that I put my watch in my pocket, but on arriving at this court I found that I must have left it at home by mistake." An old thief at the back of the court at once rushed for a hansom cab, drove to the magistrate's home, represented himself as a messenger for the watch and vanished with it. Did the trick work twice?

Notes from the County Courts

"POSSESSION" AND THE RENT ACTS

THE legal concept of possession raises problems as complex as they are varied. Perhaps no particular problem has been more troublesome than that which is concerned with the nature and legal incidents of the species of possession which the Rent Acts protect. A series of authorities has sought to remedy the conspicuous omission from the Act of 1920 of any definition of the word "possession" in s. 15. But, as appears from the case here to be considered, the difficulties have by no means been set at rest.

The facts of *Weight* v. *Gill and Woodcock*, recently decided in the Stockport County Court, may be summarised as follows: the plaintiff was the landlord, and the husband of the first defendant was the tenant, of a dwelling-house within the protection of the Acts. Early in 1947 the tenant fell out with his wife and in consequence removed himself to another part of the country, leaving the house in the occupation of his wife and child and a lodger, who was the second defendant in the action, and leaving his furniture in the house. He then gave notice to the landlord to determine the tenancy, which the landlord was delighted to accept. In the course of divorce proceedings which ensued between the tenant and his wife, the tenant undertook, at an interlocutory stage, to allow the wife to remain in the house and to continue to pay the rent. Now the landlord sued to recover possession of the house as against the tenant's wife and the lodger, alleging them to be trespassers. From the evidence of the tenant, who was called by the landlord, it appeared that he had not revoked his licence to the defendants to occupy the house, but he denied that he had any intention to resume personal occupation.

At common law the plaintiff was clearly entitled to succeed. The question, therefore, was whether there was any statutory tenancy in existence. If there was it necessarily followed, in the circumstances, that the defendants were protected as licensees of the statutory tenant.

The defendants, calling no evidence, relied upon *Brown* v. *Draper* [1944] 1 K.B. 309. In that case, upon very similar facts, it had been held, to cite the headnote from the report, "(1) that the husband was still in possession of the house; (2) that the only way he could be deprived of the protection of the Rent Restrictions Acts was (*a*) by his going out of possession or (*b*) by his having an order for recovery of possession made against him; (3) that he could not contract to give up his right to claim the protection of the Acts, and could still less give it up by a statement of his wishes or intentions; and (4) that the landlord could not obtain possession of the house without making the husband a party to the action. The wife's possession must be regarded as that of the husband and could not be treated as unlawful so long as the husband had the right to claim the protection of the Acts. The protections of the Rent Restriction Acts extended to protect a licensee of the tenant."

For the plaintiff it was argued that *Brown* v. *Draper* was distinguishable inasmuch as in that case it was the landlord, whereas in the present case it was the tenant himself, who gave notice to determine the contractual tenancy. But the substance of the plaintiff's case was that, the tenant having no *animus possidendi*, the *corpus possessionis*, otherwise arising from the occupation of the tenant's licensees, did not exist in fact or in law and that therefore no statutory tenancy subsisted which could alter the position of the parties ascertained by reference to common law principles.

The learned county court judge refers to the problem as "the converse of that set in *Brown* v. *Brash* [1948] 1 All E.R. 922." There the Court of Appeal decided that a *de facto* intention to return on the part of the tenant was in itself inadequate to preserve the statutory tenancy unless the tenant "clothes his inward intention with some formal, outward and visible sign of it." But *dicta* in the case assume the necessity for the *de facto*

intention to return as fundamental to the claim to continuance of the tenancy.

Holding himself bound to follow *Brown* v. *Draper*, the county court judge disposed of the difficulties of the contrary argument in this way:

"It seems to me that this case must be decided on the facts rather than on the words or expressed intention of Gill, which are inconsistent with the facts. He has chosen to leave his wife and child in possession of this house. He has either deserted her or retained his matrimonial home with her at this house. He has never made any effort (other than by giving notice to the landlord) to remove her from it. He has not attempted by notice to her or otherwise to revoke the licence she had to live in the house; he has not sought to turn her out. On the contrary, he is paying her alimony on the basis that she remains in the house at his expense. Having done or failed to do these things, he cannot claim that he has given up possession so long as his wife and child remain in the house. As was said by Mr. Justice Oliver Wendell Holmes in *Dickinson* v. *Brookline* (1902), 181 Mass. 195, at p. 196, 'When you intend the facts to which the law attaches a consequence you must abide the consequence whether you intend it or not.'

"This, of course, may be too broad a ground on which to decide this case having regard to the words of Lord Greene in *Brown* v. *Draper* in the last paragraph of his judgment. Its consequence would be to force a man to remain the tenant of a house when both he and his landlord wish otherwise.

"However, the facts do in my judgment amount to this, that Gill is still in possession of the house and that the present action is incompetent to dispossess him. The action should have been against him as laid down in *Brown* v. *Draper*, and not against his wife and the defendant Woodcock."

The binding authority of *Brown* v. *Draper* was clearly inescapable. No distinction in principle could be referred to the question which side gave the notice to quit. Though the evidence of the tenant in *Brown* v. *Draper* that "he had no further claim on the house" was perhaps less emphatic than in the present case, its significance as a statement of intention was not overlooked. "No contract," said Lord Greene (at p. 313), "and *a fortiori* no mere statement of his wishes or intentions, can deprive him of the statutory protection. Were the landlord now to take proceedings against the husband to recover possession, the husband could, in our opinion, say that he had changed his mind and that he now wished to avail himself of the protection of the Acts."

But it is submitted, with respect, that the attempt to reconcile this decision with the need to find an *animus possidendi* is ingenious but unsound.

Brown v. *Brash* was not of course the first case to assert that such an *animus* is a necessary condition of a statutory tenancy. In *Skinner* v. *Geary* [1931] 2 K.B. 546 the Court of Appeal upheld an order for possession granted to a landlord against a tenant who allowed some relations to occupy the house demised, either as licensees or as tenants-at-will, but who neither occupied nor intended to occupy it himself. Scrutton, L.J., says (at p. 561): "A non-occupying tenant was in my opinion never within the precincts of the Acts, which were dealing only with an occupying tenant who had a right to stay in and not be turned out. This case is to be decided on the principle that the Acts do not apply to a person who is not personally occupying the house and who has no intention of returning to it. I except, of course, such a case as that to which I have already referred—namely, of temporary absence, the best instance of which is that of a sea captain who may be away for months but who intends to return, and whose wife and family occupy the house during his absence."

Since it is essentially the personal occupation of the tenant which is protected, it is difficult to see why an *animus revertendi* which he himself expressly denies should be imputed to the tenant from the continued occupation of his licensee. The use here of the maxim of the law which assigns intentions according to consequences seems, with respect, to beg the question.

It is notable that the attention of the court in *Brown* v. *Draper* was not drawn to *Skinner* v. *Geary*. Can these two decisions be reconciled? It might be said that a husband and wife, who, whatever their *de facto* relationship, are not judicially separated, are in a special position in this respect, retaining for the purpose of the Rent Acts some trace of their historical status as a single legal *persona*. In the absence of authority, however, this seems a curiously irrational doctrine to which to have resort. Another possible approach is to seek to support *Brown* v. *Draper* solely on the narrow procedural ground that the tenant was not made a party to the proceedings. But the principle of *Skinner* v. *Geary*, if it applies at all, operates to take a case outside the scope of the Acts altogether. It would appear redundant first to require a landlord to establish as against his former tenant that no statutory tenancy exists before allowing him his common law remedies against other persons. Why should not the non-existence of the statutory tenancy be proved in the common law action?

N. C. B.

BOOKS RECEIVED

The Town and Country Planning Act, 1947. Reprinted from Butterworth's Annotated Legislation Service. By H. A. HILL, M.A., of Gray's Inn, Barrister-at-Law, and D. P. KERRIGAN, B.L. (Edin.), of the Middle Temple, Barrister-at-Law, 1948. pp. v and (with Index) 318. London: Butterworth and Co. (Publishers), Ltd. 25s. net.

The Law of Smoke Nuisances. By W. R. HORNBY STEER, M.A., LL.B., F.R.San. I., Recorder of South Molton. Second Edition. 1948. pp. (with Index) 72. London: The National Smoke Abatement Society. 3s. net.

The Cambridge Law Journal. Vol. 10, No. 1. 1948. pp. 172. London: Stevens & Sons, Ltd. 6s. net.

Carter's Income Tax, Sur-Tax and Profits Tax (N.D.C.). Fourth Edition. By G. W. MURPHY, B.A.(Com.), F.C.A. 1948. pp. (with Index) 223. London: Gee & Co. (Publishers), Ltd. 15s. net.

The Estates Gazette Digest of Land and Property Cases, 1947. Compiled and Edited by C. WILLIAM SKINNER, of Lincoln's Inn, Barrister-at-Law. 1948. pp. viii and (with Index) 322. London: The Estates Gazette, Ltd. 27s. 6d. net.

New York University Law Quarterly Review. Vol. XXIII, No. 2. April, 1948.

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Current Law Year Book, 1947. General Editor: JOHN BURKE, Barrister-at-Law. Year Book Editor: CLIFFORD WALSH, LL.B. 1948. London: Sweet & Maxwell, Ltd.; Stevens and Sons, Ltd. 35s. net.

The Awkward Marine. By JAMES SPENCER. 1948. pp. 304. London: Longmans, Green & Co. 10s. 6d. net.

Town and Country Planning. Vol. XVI, No. 61. Spring, 1948. London: The Town and Country Planning Association. 2s. 6d. net.

Sweet and Maxwell's Guide to Law Reports and Statutes. Second Edition. 1948. pp. 99. London: Sweet & Maxwell, Ltd. 10s. net.

The Year Book of World Affairs, 1948. Editors: GEORGE W. KEETON and GEORG SCHWARZENBERGER. 1948. pp. viii and (with Index) 376. London: Stevens & Sons, Ltd. 20s. net.

Burke's Loose-leaf War Legislation. Edited by H. PARRISH, Barrister-at-Law. 1947–48 Vol., Pts. 9 and 10. London: Hamish Hamilton (Law Books), Ltd.

The Indian Law Review. Vol. I, No. 4. 1947. Calcutta: Indian Law Publications, Ltd.

The Juridical Review. Vol. 60, No. 1. April, 1948. Edinburgh: W. Green & Son, Ltd.

Shaw's Restatement of the Town and Country Planning Act, 1947. By NEVILLE HOBSON, M.C., J.P., Solicitor, and PETER DOW, M.A., of the Middle Temple, Barrister-at-Law. 1948. pp. xvi and (with Index) 301. London: Shaw & Sons, Ltd. 25s. net.

The International Law Quarterly. Vol. 2, No. 1, Spring, 1948. London: Stevens & Sons, Ltd. 10s. net.

A Study of Hospital Administration. By FRANK HART and A. J. WALDEGRAVE. 1948. pp. ix and (with Index) 188. London: Stevens & Sons, Ltd. 15s. net.

The Journal of Planning Law. June, 1948. London: Sweet and Maxwell, Ltd.

Hill's Complete Law of Housing. Supplement to the Fourth Edition. By JOHN MONTGOMERIE, B.A., of Lincoln's Inn, Barrister-at-Law. 1948. pp. ix and 45. London: Butterworth & Co. (Publishers). Ltd.; Shaw & Sons, Ltd. 7s. 6d.

Oyez Practice Notes, No. 10: The 1948 Table A. A comparison with the 1929 Form. 1948. pp. 36. London: The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

Lowndes and Rudolf's Law of General Average. Seventh Edition. By A. J. HODGSON, M.A., LL.B., of the Inner Temple and Northern Circuit, Barrister-at-Law, and G. R. RUDOLF. 1948. pp. xxv and (with Index) 593. London: Stevens & Sons, Ltd. 63s. net.

Crown Proceedings. By GLANVILLE L. WILLIAMS, Ph. D., LL.D., of the Middle Temple, Barrister-at-Law. 1948. pp. xviii and (with Index) 157. London: Stevens & Sons, Ltd. 12s. 6d. net.

Massachusetts Law Quarterly. Vol. 33, No. 1. April, 1948. Massachusetts: The Massachusetts Bar Association.

Law Reports of Trials of War Criminals. Vol. III. Selected and prepared by the United Nations War Crimes Commission. 1948. pp. xi and (with Index) 123. London: H.M. Stationery Office. 5s. net.

The Trials of Oscar Wilde. Edited by H. MONTGOMERY HYDE, D.Lit., of the Middle Temple, Barrister-at-Law. 1948. pp. 384. London: William Hodge & Co., Ltd. 15s. net.

Judge Jeffreys. By H. MONTGOMERY HYDE, D. Lit., of the Middle Temple, Barrister-at-Law. With a Foreword by The Rt. Hon. Sir NORMAN BIRKETT, P.C. 1948. pp. (with Index) 328. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

Snail's Progress. The English Local Prison. Edited by CHARLES F. CARTER, Fellow of Emmanuel College, Cambridge. 1948. pp. 28. London: Penal Reform Committee of the Society of Friends. 1s. net.

Burke's Encyclopædia of War Damage and Compensation. Edited by H. PARRISH, Barrister-at-Law. Supplemental Parts 32 and 33. London: Hamish Hamilton (Law Books), Ltd.

REVIEWS

The Law Relating to Fire Insurance. By A. W. BAKER WELFORD, of Lincoln's Inn, Barrister-at-Law, and W. W. OTTER-BARRY, of the Inner Temple, Barrister-at-Law. Fourth Edition. By SIDNEY H. NOKES, of Lincoln's Inn, Barrister-at-Law. 1948. London: Butterworth & Co. (Publishers), Ltd. 55s. net.

It is not every solicitor who requires a reference book on this subject but, for those who do, the new Welford and Otter-Barry is an apparently inexhaustible source of information. Suffice to say that every branch of this subject is dealt with clearly and in the greatest detail and with very full references to authorities. The footnotes are particularly helpful, containing as they do a brief statement of the facts and *ratio decidendi* of most of the cases referred to. No specialist on the subject can afford to be without this book. The text occupies 493 pages and there is a very adequate index.

Snell's Principles of Equity. Twenty-third Edition. By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. 1947. London: Sweet & Maxwell, Ltd. 37s. 6d. net.

Snell is not only a students' book; it deserves a place in the practitioner's library. Where else can one find a really succinct and accurate account of, for example, the doctrine of reconversion, with sufficient cases noted to put one on to the line of decisions appropriate to the problem in hand? Or an account of the Married Women's Reversionary Interests Act, 1857 (Malins' Act), which the late Mr. Augustine Birrell suspected (wrongly as it happens) had been merged, together with the borough its sponsor represented in Parliament, in some larger scheme of reform? Specialist treatises of course cover the ground, but it is more than a convenience to be able to lay one's finger on almost any principle known to equity in the pages of a single volume. The excellent index will ensure that no time is wasted in this direction. We have searched this volume for any slips or inaccuracies and failed to find even one; this is the finest tribute that can be paid to a careful edition of a most useful book.

The Agriculture Act, 1947. Reprinted from Butterworth's Annotated Legislation Service. By ANTHONY CRIPPS, D.S.O., T.D., M.A., of the Middle Temple and Midland Circuit, Barrister-at-Law. 1948. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

If, as the author neatly puts it, the Agriculture Act, 1947, is based on the twin pillars of stability and efficiency, this work may fairly be said to be based upon those of comprehensiveness and thoroughness. It consists of two books and an appendix. Book I is somewhat modestly intituled "General Introduction to the Agriculture Act, 1947," and is divided into eight parts in which Object and Scope, Background, and Effect are carefully surveyed before the new provisions affecting Agricultural Holdings, Small Holdings, and Prices and Markets are discussed; and this book ends with separate accounts of Administrative Provisions and of Legal Proceedings and Service of Notices. In Book II the statute is annotated section by section. The Appendix gives us the text of the Agricultural Holdings Act, 1923, showing what has and what has not been repealed.

Much of the Act undoubtedly introduces revolutionary changes, and the author is right in suggesting that rather more than the principle of "*sic utere tuo ut alienum non laedas*" underlies it; for Justinian would never have denied to an owner a right to destroy his own property, long considered one of the essential incidents of property. Statements made in Parliament cannot, of course, nowadays be cited in support of an argument on the interpretation of an enactment; nevertheless, where the author sets them out, they will undoubtedly contribute towards the reader's understanding. Whether such passages as one in which the law of distress damage feasant is summarised in a short sentence are in place in a work of this kind is perhaps a moot point; but what the practitioner will find of the utmost value are the numerous cross-references in Book II, not only to other provisions of the Act, but to those of other measures: much time may, for instance, be saved by being able to see at once, from a glance at the notes to s. 102, whether or not an alleged weed is one stigmatised as "injurious."

In brief, the work can be recommended both to the agriculturist and to the legal practitioner.

NOTES OF CASES

COURT OF APPEAL

WORKMEN'S COMPENSATION: APPROVED SOCIETY'S COSTS

Seale *v.* National Coal Board

Tucker, Somervell and Cohen, L.JJ. 2nd June, 1948

Appeal from Tredegar County Court.

The respondent employers and one of their workmen applied to the county court for the recording of an agreement between them. As a result of the intervention of the workman's approved society, no agreement was in fact recorded. The approved society then applied to the court for their costs as against the employers. The county court judge, while approving the conduct of the society in intervening in the circumstances, expressed the view that the position of an approved society was "no higher than that of an *amicus curiæ*," and refused to award the society their costs. The society appealed.

SOMERVELL, L.J., said that the basis of the intervention by an approved society under s. 23 (6) of the Workmen's Compensation Act, 1925, on an application to judge or registrar by employer and workman for the recording of a lump sum agreement was, in form and in substance, that the amount specified in the agreement was inadequate, with consequent possibility of recourse to a correspondingly greater extent to the society's funds. The wording of s. 23 (7) and of r. 51 (9) of the Workmen's Compensation Rules, 1926, indicated that the county court judge was to have the same kind of discretion with regard to costs as he had in ordinary litigation, notwithstanding that the intervention by the society was a special course of procedure. As a matter of broad principle, if, as the result of a society's intervention, a contest developed between workman or employer or both and the society, costs would normally be awarded to the successful party as in ordinary litigation. The position of the society was not that of an *amicus curiæ*. Unlike the society here an *amicus curiæ* did not defend any interests of his own. Further, an *amicus curiæ* did not get or give costs. It appeared, however, from the judge's observation, that he might, as a matter of principle, have regarded the society as an *amicus curiæ* and so have exercised his discretion as to costs on a wrong principle. On that ground the question of costs should be remitted to him for reconsideration.

COHEN, L.J., said that it was not the case that nothing short of misconduct by the employers would ever justify an order for payment by them of the approved society's costs.

TUCKER, L.J., dissented, but only in the construction which he placed on the county court judge's judgment.

Appeal allowed. Case remitted.

APPEARANCES: *Dare* (*Kingsley Wood, Williams & Murphy*); *Everett* (*the Legal Adviser, National Coal Board*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CLAIM UNDER ORDER XIV: COUNTER-CLAIM: UNCONDITIONAL LEAVE TO DEFEND

Morgan & Son, Ltd. *v.* S. Martin Johnson & Co., Ltd.

Tucker and Cohen, L.JJ. 3rd June, 1948

Appeal from Lynskey, J., in Chambers.

By a specially indorsed writ the plaintiffs claimed from the defendants £352 17s. for storing vehicles belonging to the defendants. By affidavit filed in support of their application for leave to defend the action, the defendants alleged that, while the sum claimed would otherwise have been due to the plaintiffs, they, in breach of contract and of their duty as bailees, had either delivered one of the vehicles to the wrong person or had kept so inefficient a watch on it that it had been stolen, and that the value of the vehicle was about £375. Lynskey, J., affirming the master, ordered that the plaintiffs should be at liberty to sign final judgment in the action for the sum claimed but that execution should be stayed until trial of the defendants' counter-claim or further order. The defendants now appealed, contending that they should be given unconditional leave to defend the action.

TUCKER, L.J.—COHEN, L.J., agreeing—said that the defendants' claim was clearly a *bona fide* one arising out of the subject-matter of the plaintiffs' claim. His lordship read ss. 38, 39 and 40 of the Supreme Court of Judicature (Consolidation) Act, 1925 (referring to equitable claims by a defendant), and said that *Bankes* v. *Jarvis* [1903] 1 K.B. 549, *Young* v. *Kitchin* (1878), 3 Ex. D. 127, and, in particular, *Piggott* v. *Williams* (1821), 6 Madd. 95 (where a charge was made against a solicitor going directly to impeach the demand for payment which he was making), showed that the present case was one where the Court of Chancery would clearly have allowed the defendants' claim as an equitable set-off against the plaintiffs' claim. Therefore, the proper order was that the defendants should have unconditional leave to defend, and not that there should be judgment for the plaintiffs with a stay of execution. Appeal allowed.

APPEARANCES: *Leon* (*Buckeridge & Braune*); *Hale* (*Braby and Waller*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTIONS: PERSON IN LANDLORD'S "WHOLE-TIME" EMPLOYMENT

R. F. Fuggle, Ltd. *v.* Gadsden

Lord Greene, M.R., Wrottesley and Evershed, L.JJ. 9th June, 1948

Appeal from Watford County Court.

The landlords claimed, under para. (*g*) of Sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, to recover possession from the defendant of a dwelling-house on the ground that they reasonably required it "for occupation as a residence for a person engaged in their whole-time employment." The landlords had engaged one Wilson to enter their employment beginning on 10th September, 1947. They required the house for his occupation, but the tenant refused to leave. They accordingly brought this action for possession. Wilson had, on 7th September, 1947, become ill, and had to undergo an operation. He did not begin work until 30th October. On 29th October the county court judge delivered judgment in the action, finding that because Wilson was not actually working for the landlords at the date of the hearing he was not engaged in their whole-time employment within the meaning of para. (*g*). The landlords appealed.

LORD GREENE, M.R.—WROTTESLEY and EVERSHED, L.JJ., agreeing—said that it was only necessary that the date for beginning the service should have actually arrived at the date of the hearing; it was not necessary that the employee should be actually doing the work at that date. Next, it appeared that although Wilson had actually started work on 30th October he left the employment on 5th November, so that the house was no longer required for his occupation. The Court of Appeal was not entitled to re-examine the question of fact of reasonableness in making an order for possession, which had been before the county court judge. To remit the case for a decision on fact in the light of new circumstances would result in lack of finality. Paragraph (*g*) did not specify any time for which the whole-time employment was to endure. Appeal allowed.

APPEARANCES: *M. A. Lush* (*W. R. Lush*). The tenant did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WORKMEN'S COMPENSATION: "CHANGE IN RATES OF REMUNERATION"

Dyde *v.* National Coal Board (Stafford Colliery Unit)

Tucker, Somervell and Cohen, L.JJ. 15th June, 1948

Appeal from Hanley and Stoke-upon-Trent County Court.

The respondent workman was entitled to compensation for partial disablement by pneumoconiosis. Before the date of his notional accident, he had been paid at the rate of 25s. a shift, the normal working week then consisting of six shifts. By an agreement between the National Coal Board and the National Union of Mineworkers, dated 18th April, 1947, the five-day week was introduced, the normal working week thus consisting of five shifts with a bonus for those who worked the full qualifying five shifts. The effect of the agreement was that the workman would have received £6 5s. for the five shifts, with a bonus of 25s., making £7 10s. a week, resulting in a rate of 30s. a shift, whereas under the former system he had to work six shifts to earn that sum. The employers contended that the rate of remuneration a shift remained unchanged, with the addition of remuneration of a different kind in the form of a bonus. (*Cur. adv. vult.*)

TUCKER, L.J.—SOMERVELL and COHEN, L.JJ., concurring—said that the new agreement as applied to the shifts worked by the workman resulted in a change in the rate of his remuneration which, notwithstanding the bonus, was and still remained a rate per shift. Appeal dismissed.

APPEARANCES: *Beney*, K.C. and *G. F. I. Sunderland* (*The Solicitor, National Coal Board*); *Paull*, K.C., and *Henry Burton* (*P. J. McKnight & Ryder*, Hanley).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WORKMEN'S COMPENSATION: "CHANGE IN RATES OF REMUNERATION"

Shaw *v.* Rootes Securities, Ltd.

Tucker and Somervell, L.J., and Romer, J. 15th June, 1948

Appeal from Hanley and Stoke-upon-Trent County Court.

The respondent workman, who was in receipt of workmen's compensation as for partial incapacity, claimed adjustment of the weekly payments due to her on the ground that, by an industrial arbitration award, the pay for women workers in engineering was fixed at 62s. 6d. for a 44-hour week instead of 62s. 6d. for a 47-hour week, overtime remaining payable at the rate of time and a third for the first two hours, and time and a half thereafter. The workman worked an average of 57 hours a week before her accident.

The question was whether that alteration in the hours required to be worked in order to earn the weekly wage of 62s. 6d., with consequent earlier application of the overtime scale, constituted a change in the rates of remuneration within the meaning of s. 6 (1) of the Workmen's Compensation Act, 1943, which provides "for the purpose of calculating . . . any weekly payment payable under the Workmen's Compensation Acts, 1925 to 1943 . . . for total or partial incapacity . . . the average weekly earnings of the workman before the accident shall, if and whenever a change occurs after the date of the accident in the rates of remuneration obtaining in the class of employment in which the workman was employed . . . before the accident, be deemed . . . to be the average weekly earnings which he would have earned . . . if the changed rates had obtained" before the accident. (*Cur. adv. vult.*)

TUCKER, L.J., said that he thought that the words "rates of remuneration" should be construed broadly and given the meaning which they would naturally convey to a worker or employer in industry. A mere change in the hours of a working week where no question of overtime was involved would not constitute a change in rates of remuneration; but here the change was applicable to the 57 hours a week worked by the workman before her accident, which involved applying overtime rates to hours which did not previously carry those rates.

SOMERVELL, L.J., dissenting, thought that the facts revealed no change in rates.

ROMER, J., read a concurring judgment. Appeal dismissed.

APPEARANCES: *Beney*, K.C., *Neil Lawson* and *J. Garrard* (*Berrymans* for *T. Haynes, Duffell & Son*, Birmingham); *Holdsworth* (*Preston, Lane-Claypon & O'Kelly* for *Hollinshead and Moody*, Tunstall).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTIONS: FURNISHED LETTING

Bowness *v.* O'Dwyer

Lord Greene, M.R., Wrottesley and Evershed, L.JJ. 15th June, 1948

Appeal from Clerkenwell County Court.

In 1946 the plaintiff landlord let a "dwelling-house" to the defendant tenant for 30s. a week of which 3s. 6d. a week was attributable to certain furniture. The landlord conceded that the portion of the contractual rent attributable to the use of the furniture was not a "substantial" portion of that whole rent, so that the premises were not excluded from the Rent Restriction Acts by the first proviso to s. 12 (2) of the Act of 1920, as modified by

s. 10 (1) of the Act of 1923, or s. 3 (2) (*b*) of the Act of 1939. In 1947 the tenant applied to the local rent tribunal for a reduction of the rent under the Furnished Houses (Rent Control) Act, 1946. They reduced " the rent payable under the contract " to 8s. a week. On the tenant's application to the county court under s. 9 of the Act of 1920 (as amended by Sched. I to the Act of 1939) the judge held that the " normal profit " in respect of the premises and furniture was 13s. 6d. a week, and ordered repayment to the tenant of all rent previously paid in excess of that sum, dismissing the landlord's counter-claim for possession. There was no appeal from that decision, but the landlord, having served a new notice to quit, which validly determined the contractual tenancy, brought this action for possession, contending that the 3s. 6d. a week for the furniture was, having regard to the 8s. and the 13s. 6d. fixed by the two tribunals respectively, a substantial portion of the rent payable at the expiry of the notice to quit, and that the premises were therefore outside the Rent Restriction Acts. The county court judge dismissed the action, and the landlord now appealed. (*Cur. adv. vult.*)

EVERSHED, L.J., reading the judgment of the court, said that the county court judge had correctly held that the 3s. 6d. for the furniture must be related to the 30s. rent in the contract of letting and the relevant date for comparison, as pointed out by Asquith, L.J., in *Jozwiak* v. *Hierowski*, *ante* p. 361, was that of the original contract. Appeal dismissed.

APPEARANCES: *Heathcote-Williams* and *Ivan Spence* (*Markham Thorp & Co.*); *Magnus* (*J. S. I. Rabin*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CIRCUS: CHILD MAULED BY LION

Pearson *v.* Coleman Brothers

Lord Greene, M.R., Wrottesley and Evershed, L.JJ.
22nd June, 1948

Appeal from Clacton County Court.

The defendants gave a display of their travelling circus in a field, part of which was occupied by the circus and an adjoining part by the animals' quarters. No public lavatory was provided. The infant plaintiff, who had paid for her seat, left it during the performance in order to find a lavatory. In her search she passed near the animals' quarters and a lion in its cage mauled her with its paw. The county court judge assessed the damages at £75, but held the defendants not liable. The plaintiff appealed.

LORD GREENE, M.R.—WROTTESLEY and EVERSHED, L.JJ., agreeing—said that it was argued for the plaintiff that anyone who kept a dangerous animal must see that it did no harm; that the place in the zoo laager where the plaintiff was injured was a place in which anyone who had paid for admission to the circus part was entitled to be; and that as no lavatory was provided the plaintiff was acting reasonably in seeking some secluded place. In his view the first two arguments failed, but the third succeeded. The crucial point was that the plaintiff was an invitee, not a trespasser. She had, in fact, acted reasonably, and was accordingly entitled to recover. He would say nothing about whether the defendants would have been liable had the plaintiff been an adult. Appeal allowed.

APPEARANCES: *Jukes* and *Caulfield* (*Beaumont, Son & Rigden*, for *White, Reynolds & Beecroft*, Clacton-on-Sea); *Rees-Davies* (*Vivash Robinson & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

GUARDIANSHIP OF INFANTS: MOTHER'S ADULTERY

Allen *v.* Allen and Blacker

Wrottesley and Evershed, L.JJ. 25th June, 1948

Appeal from Wallington, J.

On his undefended petition for divorce on the ground of his wife's, the appellant's, adultery, a decree *nisi* was pronounced in favour of the respondent, her husband, he being granted the legal custody of the child of the marriage, a girl aged eight years. The father had spent most of the period of the second world war as a prisoner of war in Germany. During his absence the wife formed an association with a man, the eventual co-respondent in the divorce proceedings, whom she married after decree absolute. The husband also married again. The child had always lived with her mother. The husband, through no fault of his own, had only lived with the child for eleven weeks of her life on his return from Germany and had not seen her since Christmas, 1946. The evidence for the wife was that the child was well cared for and making good progress at school, and that she was of a nervous temperament which would be adversely affected by her being separated from her mother. The evidence for the father was that his present wife was a suitable person to look after the child, that a step-daughter, now aged seventeen years, had lived with her all her life, and that she had a son of her own, aged six years, who would be a companion for the child. Wallington, J., ordered that the father should have the care and control of the child on the ground that her mother had shown disregard for her welfare by committing adultery while her husband was abroad, holding that it would be better for the child's moral welfare that she should be brought up by persons against whom no such charge could be made. The wife appealed. By s. 1 of the Guardianship of Infants Act, 1925: " Where in any proceeding before any court . . . the custody or upbringing of an infant . . . is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration . . ."

WROTTESLEY, L.J., said that the word " welfare " in s. 1 of the Act of 1925 included both the moral and the physical welfare of the child. That the mother might commit adultery again, having committed it once, did not follow nowadays, and was not the proper test of whether it would be in the interest of the child's moral welfare to place her under the care of her father. The fact that the wife had committed adultery did not, in the absence of evidence that she had done so with anyone other than the co-respondent, or was a bad mother or housekeeper, make her an undesirable person to look after her child. The circumstances proved showed that it was in the child's interest to leave her with her mother. The husband, however, remained entitled to have access to the child, and he ought to have her with him for substantial periods. Appeal allowed.

APPEARANCES: *Hugh Forbes* (*E. Edwards & Son*); *C. T. Reeve* (*Services Divorce Department, The Law Society*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: PRECATORY TRUST

***In re* Steele; National Provincial Bank, Ltd. *v.* Steele**

Wynn Parry, J. 10th June, 1948

Adjourned summons.

By her will made in 1903 the testatrix gave a diamond necklace to her son C " to go and be held as an heirloom by him and by his eldest son on his decease and to go and descend to the eldest son of such eldest son and so on to the eldest son of his descendants as far as the rules of law and equity will permit (and I request my son to do all in his power by his will or otherwise to give effect to this my wish)." C, who died in 1945, provided by his will " I give my diamond necklace . . . upon trust for my son R during his life and after his death for his eldest son absolutely." R and his eldest son D were plaintiffs, D having an infant son. The question for decision was whether the necklace vested in C absolutely, or whether it was to be held as an heirloom in trust, as decided in *Shelley* v. *Shelley* (1868), L.R. 6 Eq. 540.

WYNN PARRY, J., said that the terms of the will corresponded almost exactly with those in *Shelley* v. *Shelley*, *supra*, in which case it was held that the precatory words prevented the first taker from receiving the gift absolutely. It had been said that in view of the trend of modern decisions *Shelley* v. *Shelley* should not be followed., Such authorities, however, as *In re Hamilton* [1895] 2 Ch. 370; *In re Williams* [1897] 2 Ch. 12, and *In re Hill* [1902] 1 Ch. 537, did not indicate that *Shelley* v. *Shelley* was no longer binding although it did appear from *In re Williams*, *supra*, that there was a strong tendency to support the view of Lord St. Leonards (Law of Property (1849), p. 375) that gifts were uncontrolled by precatory words. Jarman (7th ed., vol. 2, p. 845) supported this latter view, but Theobald (10th ed., pp. 339 and 514) did not suggest that *Shelley* v. *Shelley*, *supra*, was no longer of authority; it had stood for eighty years, and the language of the present will, made obviously with professional aid, was almost identical. There was the strongest indication that the testatrix had intended that the necklace should devolve in the same manner as was decided in *Shelley* v. *Shelley*. He would accordingly hold that the necklace should have been held on trust for C for life, then for R for life, then for D for life, and so on, with an ultimate trust for C absolutely in default of any male issue of D who should take an absolutely vested interest. The costs of all parties as between solicitor and client would be paid out of C's estate.

APPEARANCES: *Rink; P. W. Taylor; E. J. Bagshawe* (*Collyer-Bristow & Co.*, for *Hett, Davy & Stubbs*, Scunthorpe).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

FAMILY PROVISION: DISCOVERY

***In re* Borthwick; Borthwick *v.* Beauvais**

Roxburgh, J. 15th June, 1948

Procedure summons.

The plaintiffs, widow and child of a testator, took out an originating summons asking for provision to be made for them

under the Inheritance (Family Provision) Act, 1938. They applied to the defendant executors for discovery of certain documents relating to (*a*) an action regarding the entitlement to certain chattels and property of the testator; (*b*) correspondence with the Estate Duty Office regarding the value of certain shares forming part of the estate; and (*c*) cases to counsel and opinions of counsel regarding the value of such shares. On the refusal by the defendants to disclose such documents, a summons for discovery was taken out.

ROXBURGH, J., said that two points had been raised by the plaintiffs: (*a*) that in every application under the Act the value of the net estate was material and the plaintiffs were entitled as of right to the discovery of all documents bearing on such values. There was no authority for this proposition, which must be rejected. Secondly (*b*), where the value of the net estate was not agreed, the court should order such discovery as should enable the plaintiff to advance his or her case. Applications under the Act were governed by Ord. 54 F, of which r. 14 provided that "The ordinary practice and rules of the Chancery Division in so far as they are not inconsistent with the Act or this Order shall apply." By r. 1 proceedings must be taken in the Chancery Division by originating summons. There was no right to discovery under an originating summons, but the court had jurisdiction to order discovery. Such jurisdiction was rarely exercised, and would not ordinarily be exercised in such a case as the present one. If there was a special need for discovery, there must be a special application, supported by affidavit, showing the special circumstances. The evidence in the present case was insufficient to justify the order asked for. The summons would be dismissed, and the plaintiffs would pay party and party costs.

APPEARANCES: *Harold Lightman, G. M. Parbury* (*Steavenson and Couldwell*, for *Gosschalk & Austin*, Hull); *Nesbitt* (*Atkey and Son*); *H. O. Danckwerts* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LESSOR AND LESSEE: OPTION TO PURCHASE REVERSION IN FEE SIMPLE

Wright *v.* Dean

Wynn Parry, J. 2nd July, 1948

Witness action.

In 1937 the defendant demised certain premises to the plaintiff for twenty-one years. The lease provided that the expressions "lessor" and "tenant" should, where the context so admitted, include persons deriving title from the original parties. It was further provided that "the tenant" could purchase the reversion in fee simple at the price of £650 on giving notice in writing to "the lessor" to that effect. The plaintiff did not register the option as an estate contract. In April, 1944, the defendant sold the reversion, and in 1947 the plaintiff served a notice on the purchaser exercising the option, which notice the purchaser rejected in view of non-registration of the option. In June, 1947, the plaintiff served a similar notice on the defendant, who disclaimed liability. The plaintiff then commenced this action.

WYNN PARRY, J., said that the option was an interest in land (*London & South Western Ry. Co.* v. *Gomm* (1882), 20 Ch. D. 562; *Worthing Corporation* v. *Heather* [1906] 2 Ch. 532) which before 1926 would have been enforceable in equity by specific performance against any transferee other than a purchaser for value without notice. But s. 10 of the Land Charges Act, 1925, and ss. 198 and 199 of the Law of Property Act, 1925, made registration necessary if a transferee was to be affected by notice. Accordingly the plaintiff could now only pursue his common law remedy for damages against the present defendant (*Goffin* v. *Houlder* (1920), 90 L.J. Ch. 488; 124 L.T. 145). The defendant had contended that the effect of the definition clause was that the plaintiff must pursue his remedies against the actual lessor for the time being, and that there was an implied term in the option that the plaintiff should duly effect registration. But a lessor who had assigned was still liable under a covenant running with the land (*Stuart* v. *Joy* [1904] 1 K.B. 362) and this applied *a fortiori* in the case of an option which did not run with the land. There had been no novation; the defendant had not effectively assigned the burden of the option covenant, and in this instance the context did not admit that the term "lessor" should include anyone other than the defendant. The plaintiff, accordingly, would succeed. The proper measure of damages was the sale value of the property, if offered with vacant possession at the date of the notice to the defendant, less a sum composed of the £650 option price and the value of the remainder of the lease.

APPEARANCES: *Milner Holland*, K.C., and *G. D. Johnston* (*Petch & Co.*, for *Bowles & Stevens*, Worthing); *Salt*, K.C., and *John Mills* (*Carleton-Holmes & Co.*, for *Holmes, Campbell & Co.*, Littlehampton).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

MAINTENANCE: WIFE LIVING SEPARATELY IN HUSBAND'S HOUSE

Thomas *v.* Thomas

Lord Goddard, C.J., Birkett and Sellers, JJ. 28th May, 1948

Case stated by Glamorgan justices.

The appellant husband and the respondent, his wife, were living separate and apart when the wife obtained a separation and maintenance order against him. Shortly after the making of the order the wife, the husband having permitted it because of the housing shortage, returned to live in his house. She occupied there a living-room and a bedroom. The husband occupied the remainder of the house, but there was joint use of the staircase and of lavatory accommodation. The husband provided a new water tap for his wife's separate use, retaining for himself exclusive use of the existing tap. The wife did her cooking in the kitchen of the house next door. She paid the husband 10s. a week rent by way of deduction from the maintenance which he paid her. The wife performed no services whatever for the husband. The husband contended that there had been a resumption of cohabitation which, by statute, relieved him from liability under the maintenance order. The justices held that the facts disclosed no resumed cohabitation and that the order remained in force. The husband appealed.

By s. 2 (2) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, "where a married woman with respect to whom" a maintenance and a separation order "has been made resumes cohabitation with her husband after living apart from him . . . the order shall cease to have effect on the resumption of cohabitation . . ."

LORD GODDARD, C.J.—BIRKETT and SELLERS, JJ., agreeing—said that the justices were right in holding that the facts proved did not constitute resumption of cohabitation. Section 2 (2) of the Act of 1925 accordingly did not apply. *Evans* v. *Evans* [1948] 1 K.B. 175; 91 SOL. J. 664, was distinguishable, being concerned with the question of residence, under s. 1 (4) of the Act, since the order there was made before the parties had separated. The order for maintenance and separation here, therefore, remained in force. Appeal dismissed.

APPEARANCES: *Wallis-Jones* (*John B. Purchase & Clark*, for *D. W. P. Williams*, Swansea). The wife did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

POLICE PENSIONS: "NON-ACCIDENTAL INJURY"

Gordon *v.* Barnsley Police Authority

Lord Goddard, C.J., Birkett and Sellers, JJ. 28th May, 1948

Appeal under the Police Pensions Act, 1921, from West Riding Quarter Sessions.

The appellant was the widow of a police officer who, while suffering unawares from heart disease, was put to patrol a beat involving the use of a bicycle. The beat was not unusually hilly and did not involve anything unusually risky for a police officer in average health. The cycling, however, aggravated the condition of his heart and he died as a result. By s. 3 (*b*) of the Police Pensions Act, 1921: "Where a police officer dies whilst serving . . . from the effects of an injury received in the execution of his duty . . . his widow shall be entitled, where the injury was accidental, to a widow's ordinary pension, and where the injury was non-accidental, to a widow's special pension." By s. 33 (3): "Any injury intentionally inflicted, or incurred in the performance of a duty involving special risks, shall be deemed to be a non-accidental injury." The widow claimed a special pension on the basis that the deceased officer had suffered a non-accidental injury. Quarter sessions negatived the claim, and she now appealed.

LORD GODDARD, C.J., said that, while the definition of non-accidental injury in s. 33 (3) did not cover every kind of injury which could be described as non-accidental, an injury must, in order to fall within the definition, be *ejusdem generis* with an injury intentionally inflicted or incurred in the performance of a duty involving special risks. Moreover, the "special risk" must be a risk special to the duty being performed and not to the police officer himself. While the deceased's heart disease amounted to accidental injury within s. 3 (*b*), entitling his widow to an ordinary pension, it was not a non-accidental injury within the definition such as would entitle her to a special pension. Appeal dismissed.

APPEARANCES: *R. Lyons* (*Collyer-Bristow & Co.*, for *Alf. Masser & Co.*, Leeds); *G. W. Wrangham* (*Torr & Co.*, for *The Town Clerk*, Barnsley).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TOWN PLANNING: JUSTICES' JURISDICTION ON APPEAL

Swindon Corporation *v.* Pearce and Another

Lord Goddard, C.J., Birkett and Sellers, JJ. 4th June, 1948

Case stated by the Appeal Committee of Wiltshire Quarter Sessions.

The appellant corporation, as interim development authority, declared an area of Swindon to be zoned under their town planning scheme under the Town and Country Planning Act, 1932, as one in which the use of premises for purposes other than residential without the consent of the corporation was prohibited. In July, 1946, the respondents occupied premises in the area for the purposes of a second-hand motor vehicle business, which was a development within the meaning of the Town and Country Planning (Interim Development) Act, 1943. A subsequent application by the respondents under s. 10 of the Act of 1932 to the corporation for permission to make that use of the premises was refused. In June, 1947, the corporation, being satisfied that it was expedient to do so, served notice on the respondents prohibiting that use of the premises. The respondents appealed to the justices, who allowed the appeal, their decision being confirmed by quarter sessions. The corporation appealed. By para. 3 of Sched. I to the Act of 1943, "If . . . the" justices "are satisfied that the interim development authority are entitled to take the proposed action on the grounds specified in the notice" of prohibition "they shall dismiss the appeal." (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said that the jurisdiction of the justices on appeal was only to decide whether the authority had acted within their powers in issuing the notice of prohibition, that is, such questions as whether the land in question was comprised in the authority's town planning scheme, whether the development was contrary to the scheme, and whether the necessary steps which were a condition precedent to the service of the notice had been taken. It did not extend to consideration of the authority's reasons for considering it expedient to prohibit the development in question, even though the authority had chosen to state their reasons in the notice, which they were under no obligation to do. Appeal allowed.

APPEARANCES: *Harold Williams*, K.C., and *Molony* (*Sharpe, Pritchard & Co.*, for the *Town Clerk*, Swindon); *Skelhorn* (*Pennington & Son*, for *Lemon, Humphreys & Parker*, Swindon).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TOWN AND COUNTRY PLANNING

STATUTORY INSTRUMENTS

We reproduce below for the convenience of readers a valuable list of Statutory Instruments, memoranda and circulars issued or to be issued in connection with the Town and Country Planning Act, 1947. The list was published in *Hansard*, H.C., 5th July, 1948, col. 13, in reply to a question put to the Minister of Town and Country Planning by Mr. Thornton-Kemsley. A similar list in relation to Scotland was also published (*ibid.*, col. 15):—

1.—STATUTORY INSTRUMENTS ISSUED BETWEEN THE PASSING OF THE TOWN AND COUNTRY PLANNING ACT, 1947, AND THE APPOINTED DAY.

	No.	*Title.*
1947.	2294.	The Central Land Board Regulations, 1947.
1947.	2499.	The Town and Country Planning (Authorisation of Delegation) Regulations, 1947.
1948.	213.	The Town and Country Planning Act, 1947 (Appointed Day) Order, 1948.
1948.	711.	The Town and Country Planning (Making of Applications) Regulations, 1948.
1948.	902.	The Claims for Depreciation of Land Value Regulations, 1948.
1948.	954.	The Town and Country Planning (Use Classes) Order, 1948.
1948.	955.	The Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948.
1948.	958.	The Town and Country Planning (General Development) Order, 1948.
1948.	1126.	The Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948.
1948.	1188.	The Town and Country Planning (Development Charge Exemptions) Regulations, 1948.
1948.	1189.	The Town and Country Planning (Development Charge) Regulations, 1948.
1948.	1236.	The Town and Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations, 1948.
1948.	1380.	The Town and Country Planning (General) Regulations, 1948.

2.—MEMORANDA.

(1) Town and Country Planning Act, 1947. Explanatory Memorandum—Part I—General Notes.

(2) Orders under Section 12 (2) (*f*) and Para. 6 of the Third Schedule of the Town and Country Planning Act, 1947. Explanatory Memorandum.

(3) Town and Country Planning (General Development) Order, 1948. Explanatory Memorandum.

3.—STATUTORY INSTRUMENTS ISSUED BY OTHER DEPARTMENTS UNDER OR IN CONNECTION WITH THE TOWN AND COUNTRY PLANNING ACT, 1947.

	No.	*Title.*
1948.	207.	The Acquisition of Land (Claims for adjustment of compensation for War Damaged Land) Regulations, 1948. (*Treasury.*)
1948.	1213. (L.9)	The Town and Country Planning Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948. (*Lord Chancellor.*)
1948.	1283. (L.12)	The Local Land Charges (Amendment) Rules. (*Lord Chancellor.*)
1948.	1309.	The Town and Country Planning (Erection of Industrial Buildings) Regulations, 1948. (*Board of Trade.*)
1948.	1348.	The Stopping Up of Highways (Concurrent Proceedings) Regulations, 1948. (*Ministry of Transport.*)

4.—INSTRUMENTS WHICH HAVE BEEN MADE AND WILL BE PUBLISHED SHORTLY.*

(1) Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948.

(2) Town and Country Planning (Minerals) Regulations, 1948.

(3) Town and Country Planning (Modification of Mines Act) Regulations, 1948.

(4) Town and Country Planning (Local Authorities' Land: Exceptions to Section 82) Regulations, 1948.

(5) Town and Country Planning Delegation (London) Regulations, 1948.

(6) Town and Country Planning (Tree Preservation Order) Regulations, 1948.

(7) Town and Country Planning (City of London Applications) Direction.

(8) Town and Country Planning (Minerals) Direction No. 1.

5.—MEMORANDUM TO BE ISSUED SHORTLY.

Town and Country Planning Act, 1947. Explanatory Memorandum Part II.—Notes on Sections.

6.—CIRCULARS CONTAINING EXPLANATORY MATTER.

Circular	34.	Town and Country Planning Act, 1947.
,,	35.	The Functions of the District Valuer and the Regional Estate Officer.
,,	37.	Town and Country Planning (Authorisation of Delegation) Regulations, 1947.
,,	40.	Survey for Development Plans.
,,	41.	Town and Country Planning (Making of Applications) Regulations, 1948.
,,	42.	Orders under Section 12 (2) (*f*) and the Third Schedule.
,,	45.	Model form of application for Planning Permission.
,,	46.	Town and Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations, 1948.
,,	47.	Town and Country Planning (General Development) Order, 1948.

* All these instruments have since been published.—ED., SOL. J.

Mr. C. L. Hodgkinson, author of "English Justice," addressed the members of the Haldane Society, on 30th June, at the Niblett Hall, Inner Temple, on "Police Powers and Procedure in Courts of Summary Jurisdiction." The society will hold a public meeting in the Niblett Hall, at 7 p.m., on Wednesday, 21st July. Mr. W. Harvey Moore, K.C., will speak on "The Reform of Private International Law."

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

LAYING OF DOCUMENTS BEFORE PARLIAMENT (INTERPRETATION) BILL [H.L.].

To declare the meaning of references in Acts of Parliament to the laying of instruments or other documents before Parliament or before either House of Parliament and the effect during a vacancy in the office of the Lord Chancellor or of the Speaker of the House of Commons of the requirement in s. 4 of the Statutory Instruments Act, 1946, to send notification forthwith to each of them of an instrument's being made so as to operate before it has been laid before Parliament. [8th July.

NATIONAL SERVICE BILL [H.L.].

To consolidate the National Service Acts, 1939 to 1947, and the Reinstatement in Civil Employment Act, 1944, so far as that Act applies to persons called up for National Service after the 31st day of December, 1948. [8th July.

Read Second Time :—

MONOPOLY (INQUIRY AND CONTROL) BILL [H.C.]. [5th July.
REPRESENTATION OF THE PEOPLE BILL [H.C.]. [5th July.

Read Third Time :—

CRIMINAL JUSTICE BILL [H.C.]. [5th July.
NURSERIES AND CHILD-MINDERS REGULATION BILL [H.C.]. [5th July.
PUBLIC REGISTERS AND RECORDS (SCOTLAND) BILL [H.L.]. [8th July.
STATUTE LAW REVISION BILL [H.L.]. [8th July.

In Committee :—

GAS BILL [H.C.]. [7th July.

HOUSE OF COMMONS

Read Second Time :—

BRITISH NATIONALITY BILL [H.L.]. [7th July.

Read Third Time :—

AGRICULTURAL WAGES BILL [H.L.]. [9th July.
EXPORT GUARANTEES BILL [H.C.]. [9th July.
FACTORIES BILL [H.L.]. [9th July.
VETERINARY SURGEONS BILL [H.L.]. [9th July.

QUESTIONS TO MINISTERS

COMMISSIONERS FOR OATHS (APPOINTMENTS)

Sir JOHN MELLOR asked the Attorney-General why applicants for appointment by the Lord Chancellor as commissioners for oaths are required to provide evidence that they are well affected to His Majesty's Government.

The ATTORNEY-GENERAL (Sir HARTLEY SHAWCROSS) : The form of certificate that the applicant " is a person of integrity and well affected to His Majesty's Person and Government " is traditional. In the context, I do not think that this certificate could be regarded as having any political connotation, its intention being to endorse the applicant's loyalty to the King and Constitution as by law established.

Sir J. MELLOR : Will the right hon. and learned gentleman agree that the references to His Majesty's person and His Majesty's Government are clearly severable in the document ; and will he give an assurance that if references to His Majesty's Government are deleted from the customary form in a particular case the applicant will not thereby be prejudiced ?

The ATTORNEY-GENERAL : I should not be prepared to give any assurance about a particular case until it arises. [5th July.

SCOTLAND (REGISTER OF SASINES)

Sir W. DARLING asked the Secretary of State for Scotland if he is aware of the delays in the recording of deeds in the Register of Sasines ; that formerly these deeds were available in five weeks but now it is approximately seven months, and what steps he proposes to take to facilitate the transaction of important legal business.

Mr. WOODBURN : I am aware of the delays in the registration of writs in the Register of Sasines. The number of writs presented for registration has risen steeply in the last two or three years and, largely because of the general shortage of manpower, adjustments of staff have not kept pace with the growth of work. Sanction has now been given for a substantial increase of staff and it is hoped that it will be possible to provide additional staff in the immediate future. [6th July.

LAW COURTS (APPOINTMENTS)

In reply to a question by Mr. SKEFFINGTON, who had asked what offices or appointments in the Law Courts are made by the judges, the ATTORNEY-GENERAL circulated the following written answer :—

" I assume that the question is not intended to include appointments made by the Lord Chancellor. Masters of the King's Bench Division are appointed by the Lord Chief Justice and the Master of the Rolls alternately. The Master of the Crown Office, the Assistant Registrar of the Court of Criminal Appeal and Clerks of Assize are appointed by the Lord Chief Justice. Registrars of the Probate Division and Admiralty Divisions are appointed by the President of that Division.

The Lord Chief Justice and the Master of the Rolls appoint their own secretaries and each judge of the Supreme Court has a clerk who is appointed by the judge himself. The clerks of the Probate Registry are appointed by the President of the Probate Division after passing the Civil Service clerical examination. The other clerks are appointed on the recommendation of a selection board by the President of the Division to which the clerk is to be attached, or, in the case of the Central Office, by the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls in rotation." [5th July.

LOCAL AUTHORITIES (REQUISITIONING POWERS)

Answering questions by Mr. BESWICK and Mr. TIFFANY as to the reason for withdrawal from clerks to local authorities of requisitioning powers hitherto delegated to them [*ante*, p. 354], the MINISTER OF HEALTH said that he could not comment on the way in which clerks had used these powers since there were cases before the courts at the present time, and stated that the new machinery would be promptly exercised when necessary, and would be reconsidered if found to be too dilatory. [8th July.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 1455. **Charities for Disabled Persons** Regulations, 1948. June 22.
No. 1501. **Children Act** (Compensation of Officers) Regulations, 1948. July 1.
No. 1518. **Companies** (Forms) Order, 1948. July 1.
No. 1519. **Income Tax** (Unemployments) (No. 8) Regulations, 1948. July 1.
No. 1458. **Local Government** (Compensation) Regulations, 1948. June 30.
No. 1454. **National Assistance** (Appeal Tribunals) Rules Confirmation Instrument, 1948. June 29.
No. 1457. National Assistance (Compensation) Regulations, 1948. June 30.
No. 1489. **National Health Service** (Control and Management of Hospital Endowment Fund) Regulations, 1948. June 30.
No. 1506. National Health Service (Medical Practices Compensation) Regulations, 1948. July 1.
No. 1475. National Health Service (Transfer of Officers and Compensation) Regulations, 1948. June 30.
No. 1417. **National Insurance** (Contributions) Regulations, 1948. June 29.
No. 1503. National Insurance (General Transitional) Regulations, 1948. July 1.
No. 1443. **National Insurance and Industrial Injuries** (Stamps) Regulations, 1948. June 28.
No. 1532. **National Insurance (Industrial Injuries)** (Benefit) Amendment Regulations, 1948. July 2.
No. 1456. National Insurance (Industrial Injuries) (Insurable and Excepted Employments) Regulations, 1948. June 29.
No. 1460. **Town and Country Planning** (City of London Applications) Direction, 1948. June 30.
No. 1459. Town and Country Planning Delegation (London) Regulations, 1948. June 30.
No. 1520. Town and Country Planning (Enforcement of Restriction of Ribbon Development Acts) Regulations, 1948. May 25.
No. 1437. Town and Country Planning Minerals Direction No. 1, 1948. June 29.
No. 1436. Town and Country Planning (Tree Preservation Order) Regulations, 1948. June 29.

MINISTRY OF HEALTH

Form L.L.C. 1 (F). Town and Country Planning Acts, 1944 and 1947. Part X of Local Land Charges Register relating to Lists of Buildings compiled or approved by the Minister of Town and Country Planning. Schedule to Official Certificate of Search.

Form L.L.C. 1 (B). Town and Country Planning Acts, 1944 and 1947. Part VI of Local Land Charges Register relating to Compulsory Purchase Orders, Declaratory Orders, and Compulsory Purchase Orders containing a Direction. Schedule to Official Certificate of Search.

MINISTRY OF TOWN AND COUNTRY PLANNING

Circular No. 52. Town and Country Planning (Tree Preservation Order) Regulations, 1948. June 30.

Circular No. 53. The Coming into Operation of the Town and Country Planning Act, 1947. June 30.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

NOTES AND NEWS

Professional Announcement

LINKLATERS & PAINES announce that from 16th July, 1948, they will be vacating their present offices at Granite House, 97 Cannon Street, and will open their new offices on the same date at Austin Friars House, 6 Austin Friars, E.C.2. All branches of the firm's practice will in future be carried on from the latter address, to which all correspondence should be sent. Telephone: London Wall 6191.

Honours and Appointments

Mr. J. H. CAESAR, of Chester, has been appointed Senior Assistant Solicitor to the Huddersfield Corporation. He was admitted in 1939.

Mr. P. H. BARTLETT has been appointed Deputy Town Clerk of Hastings. He was admitted in 1937.

Mr. JOHN WHATLEY has been appointed an Assistant Solicitor to Heston and Isleworth Borough Council.

Mr. C. F. GOULD, of Messrs. T. G. Baynes & Sons, of Bexleyheath, has been appointed a District Notary Public.

Notes

PRACTICE DIRECTION BY THE JUDGES OF THE CHANCERY DIVISION

FIXING DATES FOR THE HEARING OF WITNESS ACTIONS IN THE CHANCERY DIVISION

1. On and after the 12th October, 1948, no cause or matter set down in the witness list in the Chancery Division will be heard unless a date has previously been fixed for its hearing by the Master in Charge of the Chancery Witness List (hereafter referred to as the Master in Charge).

2. On and after the 19th July, 1948, any party or his solicitor may, at any time after setting down, on giving four clear days' notice in writing to all other parties, attend before the Master in Charge, at Room No. 154, Royal Courts of Justice, Strand, W.C.2, to make application to fix a date for trial or to confirm and record a date fixed by a judge before the 19th July.

3. Parties or their solicitors wishing to apply to fix or confirm and record a date for trial should communicate with the cause clerk in Room No. 136 (telephone, Holborn 7641, Ex. 187), and make an appointment to attend before the Master in Charge. In order not to prejudice parties to actions which are set down before the 19th July, 1948, appointments to attend before the Master in Charge will be made as far as possible in the order in which those actions have been set down.

4. Upon any such application each party or his solicitor will be required to hand to the Master in Charge a note signed by himself stating the number of witnesses the party proposes to call, his own estimate of the length of hearing in hours and an indication of the quantity of documents in the case. If counsel has already advised on evidence or been briefed, counsel's estimate of the length of hearing shall be included in the said note. Solicitors attending upon any such application will be expected to know which dates are convenient to all persons concerned, including witnesses and counsel.

5. No costs of counsel will be allowed for attending an application to fix a date for hearing.

6. When a date has been fixed by the Master in Charge it will not be altered save in exceptional circumstances upon application being made to him after four clear days' notice in writing has been given to all other parties; and, except by his direction, no application regarding the settling of the witness list shall be made to any judge.

7. If any action in which a date has been fixed is settled, both parties or their solicitors are required to notify the Master in Charge in writing as soon as possible and in any case not later than twenty-four hours after settlement.

8. The foregoing paragraphs will apply to all the cases in the witness list except cases in which dates for hearing have been fixed for this sittings and all such other cases as will be notified for hearing this sittings before the 19th July.

A. H. HOLLAND,
Chief Master
(Chancery Division).

7th July, 1948.

PRACTICE DIRECTION BY THE CHANCERY JUDGES

TRUSTEE UNDER DISABILITY

The Chancery judges have directed that the Practice Note at p. 178 of the *Weekly Notes* for 18th August, 1945, as to evidence of the incapacity of a trustee, is no longer to be acted upon. In future there must be medical evidence showing incapacity to act as a trustee at the date of the issue of the originating summons and that the incapacity is continuing at the date of swearing the affidavit. The affidavit should also show incapacity to execute transfers where a vesting order of stocks and shares is asked for.

The trustee under disability shall be made a respondent to the summons but need not be served unless he is sole trustee or has a beneficial interest.

A. H. HOLLAND,
Chief Master
(Chancery Division).

7th July, 1948.

NATIONAL HEALTH SERVICE

MEDICAL PRACTICES COMMITTEE APPOINTED

The Minister of Health, Mr. Aneurin Bevan, has now appointed under the National Health Service Act, 1946, the Medical Practices Committee, whose main function will be to consider applications from doctors who, after 5th July, wish to take part as general practitioners in the National Health Service. The committee is composed of seven general practitioners (one of whom is chairman), a barrister and a layman. One of the doctors is a woman. The barrister is Mr. R. Wilberforce. In considering applications from doctors to take part in the service, the committee will decide whether further doctors are needed in the public service in the area concerned. The committee will also advise doctors on request whether any transactions they are proposing to enter into comply with the provisions of the Act prohibiting the sale of goodwill. Their offices will be at Devonshire House, Mayfair Place, Piccadilly, London, W.1.

COURT PAPERS

SUPREME COURT OF JUDICATURE

TRINITY SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE

CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey	Mr. Justice Roxburgh
			Witness	*Non-Witness*
Mon., July 19	Mr. Jones	Mr. Blaker	Mr. Blaker	Mr. Farr
Tues., ,, 20	Reader	Andrews	Andrews	Blaker
Wed., ,, 21	Hay	Jones	Jones	Andrews
Thurs., ,, 22	Farr	Reader	Reader	Jones
Fri., ,, 23	Blaker	Hay	Hay	Reader
Sat., ,, 24	Andrews	Farr	Farr	Hay

Date	Group A Mr. Justice Wynn Parry *Business as listed*	Mr. Justice Romer *Business as listed*	Group B Mr. Justice Jenkins *Witness*	Mr. Justice Harman *Non-Witness*
Mon., July 19	Mr. Andrews	Mr. Hay	Mr. Jones	Mr. Reader
Tues., ,, 20	Jones	Farr	Reader	Hay
Wed., ,, 21	Reader	Blaker	Hay	Farr
Thurs., ,, 22	Hay	Andrews	Farr	Blaker
Fri., ,, 23	Farr	Jones	Blaker	Andrews
Sat., ,, 24	Blaker	Reader	Andrews	Jones

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